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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,480	10/05/2005	Steven P Buysse	2134CONCIPPCTUS	2853

50855 7590 08/16/2007
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EXAMINER

YABUT, DIANE D

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

This action is in response to applicant's amendments received on 29 May 2007 and 19 April 2007. The examiner acknowledges the amendments made to the claims, the specification, and the drawings.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 21 May 2007 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Couture** (U.S. Pub. No. **20020188294**) in view of **Stone** (U.S. Pat. No. **5,573,534**).

Claims 1-2 and 7-9: Couture discloses a handle having an elongated tube **18** affixed thereto, the tube including first and second jaw members **110**, **120** attached to a distal end thereof, the jaw members being movable from a first position for approximating tissue to at least one subsequent position for grasping tissue therebetween, each of the jaw members including an electrically conductive sealing surface, the handle including a

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fixed handle **50** and a movable handle **40**, the movable handle being movable relative to the fixed handle to effect movement of the jaw members from the first position to the at least one subsequent position for grasping tissue, the opposable sealing surfaces including a non-stick material coating which is deposited on the opposable sealing surfaces for reducing tissue adhesion during sealing process, means for connecting **300** the jaw members to a source of electrosurgical energy such that the opposable seal surfaces are capable of conducting electrosurgical energy through tissue held therebetween, a stop **150a** for maintaining a minimum separation distance of at least about 0.03 millimeters, or in the range of about 0.03 millimeters to about 0.16 millimeters, between opposable sealing surfaces, and means for maintaining **30, 22, 21** a closure force in the range of about 3 kg/cm² to about 16 kg/cm² between opposable sealing surfaces (Figures 1A, 7; page 4, paragraphs 69-70; page 5, paragraph 74; page 12, paragraph 141; page 14, paragraph 162; page).

Couture discloses the claimed device, including means for connecting the jaw members to a source of electrosurgical energy including a conductive tube **310**, except for the means for connecting includes a pushrod for connecting a first jaw member to a source of electrosurgical energy.

Stone teaches means for connecting including a pushrod **22** for connecting a first jaw member to a source of electrosurgical energy (Figure 1, col. 3, lines 15-21, col. 5, lines 60-67 to col. 6, lines 1-4). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a pushrod for connecting a jaw to a source of electrosurgical energy, as taught by Stone, to Couture in order for the interior of the

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device to be space efficient and for the actuator to have multiple functions, as well as eliminating the need for a separate connection mechanism.

Claims 3-4: Couture discloses the maintaining means including a ratchet disposed within the fixed handle **50** and at least one complimentary interlocking mechanical interface disposed on the movable handle **40**, the ratchet and the complimentary interlocking mechanical interface providing at least one interlocking position for maintaining a closure force within the range of about 7 kg/cm² to about 13 kg/cm² or about 4 kg/cm² to 6.5 kg/cm² between opposable sealing surfaces (page 5, paragraph 78; page 14, paragraph 162).

Claims 5-6: Couture discloses the stop **150a** being disposed on or disposed adjacent to at least one of the sealing surfaces (page 11, paragraph 132).

Claims 10-11 and 13-14: Couture discloses the non-stick coating being selected from a group of materials consisting of nitrides and nickel/chrome alloys, including at least one of: TiN; ZrN; TiAlN; CrN; nickel/chrome alloys with a Ni/Cr ratio of approximately 5:1; Inconel 600; Ni200; and Ni201 (page 2, paragraph 20).

Claim 12: Couture discloses the opposable sealing surfaces being manufactured from a non-stick material (page 14, paragraph 163).

Claims 15-17: Couture discloses at least one of the jaw members, handles and elongated tube including an insulative material serving as a coating or sheath disposed thereon (page 7, paragraph 99).

Response to Arguments

3. Applicant's arguments filed 19 April 2007 have been fully considered but they are not persuasive.

4. In response to applicant's assertion that prior art reference **Couture** (U.S. Pub. No. **20020188294**) does not qualify as art under 35 USC 102(e) since the reference is owned by a common Assignee of record as the present application, is improper since in the Office Action 01/24/2007, page 4, it reads that the claims are rejectable under 35 USC 102(a), as the present invention claims priority from PCT/US03/17335, priority date 06/03/2003, and the Couture reference was published on 12/12/2002.

5. The applicant argues that Sekino does not disclose a laparoscopic bipolar electrosurgical instrument that has means for connecting the jaw members to a source of electrosurgical energy such that the opposable surfaces are capable of conducting electrosurgical energy through tissue held therebetween. In response to applicant's arguments against the reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Sekino is meant to be combined with Couture's device which reads on these limitations.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SUPERVISORY PATENT EXAMINER